

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.930 OF 2017**

Smt. Sunita Gajanan Dhamraskar .Petitioner

Vs.

Vivekanand Shankar Patil & ors. .Respondents

Mr.Rohan H. Barge, Advocate, for the Petitioner

**CORAM : R.G.KETKAR, J.**

**DATE : 06.03.2017**

**P.C.**

. Heard Mr. Barge, learned counsel for the Petitioner.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Judgment Debtor' has challenged the Judgment and Order dated 15.07.2016 passed by the learned Civil Judge (S. D.), Panvel, Navi Mumbai below Exh.55 in Special Civil Suit No.46 of 2011. By that order, the learned trial Judge rejected the Application made by the Petitioner, hereinafter referred to as 'Plaintiff' under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (For short "CPC") for amendment of the plaint. In paragraph 9, the learned trial Judge observed that issues were framed at Exh.54 and the suit was fixed for hearing. At that stage, the Plaintiff filed an Application under Order VI, Rule 17 of the CPC. In view of proviso to

Order VI, Rule 17 of the CPC, amendment cannot be sought unless condition stipulated therein is satisfied. The learned trial Judge also referred to decisions in the case of (i) ***VERA LELISA VIEGAS PEREIRA VS. AGNELO CAETANO COLACO and others, 2014(1) Mh.L.J. 170*** and (ii) ***GANGUBAI BABAN KADAM VS. DR. VIDYA VIJAY JOSHI, 2015(2) Mh.L.J. 444*** and rejected the Application.

3. Prima facie, framing of the issues does not amount to commencement of trial. In the case of ***Vidyabai Vs Padmalatha, 2009 (2) SCC 409***, the Apex Court has held that framing of issues is the first date of hearing and filing of affidavit of evidence is the commencement of trial.

4. In view thereof, issue notice to the Respondents, returnable on **17.04.2017**. Notice to indicate that subject to the time constraint and convenience of the Court, Petition may be disposed of finally on that date. Notice shall further indicate that despite service, if the Respondents fail to appear, the Court may proceed to decide the Petition on its own merits. In the meantime, there shall be ad-interim order in terms of prayer clause (c).

**(R.G.KETKAR, J.)**